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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN ROBERT CENSALE,

Defendant and Appellant.

A126981

(San Francisco City & County
Super. Ct. No. 200890)

Defendant Brian Robert Censale appeals following his plea of no contest to seven felony counts and admission of numerous prior convictions. His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude no arguable issues are presented for review, and affirm the judgment.

BACKGROUND

On August 22, 2004, Rose Nolan, defendant's former girlfriend and cohabitant, went to the police department and recounted many instances of defendant being emotionally and physically abusive, threatening her, preventing her free movement, and forcing her to accompany him. Nolan also reported defendant had verbally threatened her friend, Vanessa Bertotti, who went with Nolan to the police department.

Based on what Nolan reported, a domestic violence complaint was filed against defendant on August 25, 2004. After many continuances, a preliminary hearing was held on February 14, 2007. At the outset of the hearing, the court denied defendant's *Marsden* motion¹ on the merits and his subsequent *Faretta* motion² as untimely. Defendant waived hearing as to four of the 11 counts (counts 8-11), was held to answer on six of remaining counts (counts 2-7), and bail was set in the amount of \$250,000.

On February 27, 2007, the San Francisco District Attorney filed an information charging defendant with 10 felonies: corporal injury to a cohabitant on June 20, 2004 (Pen. Code, § 273.5, subd. (a));³ assault on June 20, 2004 (§ 245, subd. (a)(1)); corporal injury to a cohabitant on August 18, 2004 (§ 273.5, subd. (a)); kidnapping on August 21, 2004 (§ 207); false imprisonment on August 21, 2004 (§ 236); terrorist threat on August 22, 2004 (§ 422); failing to register as required during four different time periods (former § 290, subd. (a)(1)(A), (a)(1)(D).) It was further alleged defendant had incurred prior convictions pursuant to sections 667, subdivisions (d) and (e), 1170.12, subdivisions (b) and (c) for lewd or lascivious acts with a child under 14 years of age. It was also alleged defendant had suffered prior convictions and served prison sentences within the meaning of section 667.5, subdivision (b), for possession of a deadly weapon, lewd or lascivious act upon a child, false imprisonment, corporal injury to a cohabitant, and robbery.

Defendant filed another *Faretta* motion, which was granted, and he represented himself commencing July 3, 2007.

On February 19, 2008, private counsel "specially" appeared for defendant and filed a section 995 motion to set aside the information on the grounds defendant's *Faretta* motion should have been granted and the evidence was insufficient to hold him to answer. On July 15, 2008, the trial court granted the motion as to the false imprisonment charge on insufficiency of the evidence, and otherwise denied it.

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

² *Faretta v. California* (1975) 422 U.S. 806.

³ All further statutory references are to the Penal Code.

On December 10, 2008, other counsel made a general appearance for defendant.

On March 6, 2009, the date set for trial, defendant made another *Faretta* motion, which the court denied as untimely. Trial was continued, and on April 6, 2009, defendant made a written *Faretta* motion, which the court denied as being equivocal. On April 20, 2009, however, the court granted defendant's motion for reconsideration, and granted his *Faretta* motion.

On July 31, 2009, defendant, representing himself, filed a motion to suppress on the ground his arrest was based on the "hearsay" of Nolan. On August 13, 2009, he moved to dismiss the entire case on due process grounds based on lost witness testimony, destruction of evidence, and illegible medical records, and to sever the registration counts.

On August 18, 2009, the court denied the motion to suppress on the ground he had been a parolee at large with a search condition known to the police officers. On August 19, 2009, it granted the motion to sever. On August 21, 2009, the court denied the motion to dismiss as to all counts but one.

Following these rulings, defendant entered a change of plea on August 21, 2009, pleading guilty to seven offenses: corporal injury to a cohabitant on June 20, 2004 (§ 273.5, subd. (a)); assault by means to produce great bodily injury on June 20, 2004 (§ 245, subd. (a)(1)); corporal injury to a cohabitant on August 18, 2004 (§ 273.5, subd. (a)); threatening to commit a crime which could result in death on August 22, 2004 (§ 422); failure to register as a sex offender between May 1, 2004, and August 22, 2004 (former § 290, subd. (a)(1)(A)); failure to register as a sex offender between April 9, 2002, and March 21, 2003 (former § 290, subd. (a)(1)(D)); and failure to register as a sex offender between April 9, 2003, and August 22, 2004 (former § 290, subd. (a)(1)(D)). He also admitted prior "strike" convictions and numerous "prison priors."

On the date set for sentencing, defendant still representing himself, filed a letter with the court asserting the court's intended sentence was "crazy" and claiming his constitutional rights had been violated throughout the proceedings.

The court proceeded with sentencing, and on October 8, 2009, sentenced defendant to an eight-year prison sentence (“8 yrs at 80%”), as agreed to by defendant at the time of his guilty plea and as recommended by the Probation Department.

On October 16, 2009, defendant filed a request for a certificate of probable cause, which the court denied, and also a timely notice of appeal.

DISCUSSION

Section 1237.5 generally precludes an appeal from a judgment of conviction after a plea of no contest or guilty unless the defendant has applied for, and the trial court has granted, a certificate of probable cause. There are two exceptions: (1) a challenge to a search and seizure ruling, as to which an appeal is proper under section 1538.5, subdivision (m); and (2) postplea sentencing issues. (*People v. Shelton* (2006) 37 Cal.4th 759, 766; see also *People v. Buttram* (2003) 30 Cal.4th 773, 780.) Since defendant’s application for a certificate of probable cause was denied, he is not able to challenge the validity of his plea or any other matter that preceded its entry. (*People v. Cole* (2001) 88 Cal.App.4th 850, 868.) There is no search and seizure issue in this case since defendant was a parolee at large subject to a search condition at the time of his arrest and search of his residence. At the sentencing hearing, the trial court considered all relevant matters, made all necessary and appropriate findings, imposed required fines and fees and issued a no harassment and no contact order as to Nolan and Bertotti.

DISPOSITION

After a full review of the record, we find no arguable issues and affirm the judgment.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.

A126981, *People v. Censale*